STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGN,

Plaintiff-Appellant,

v.

S Ct Case No. 150371
COA Case No. 314877
Cir Ct Case No. 12-062736-FH

CHARLES ALMONDO-MAURICE DUNBAR,

Defendant-Appellee.

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DEFENDANT-APPELLEE'S SUPPLEMENTAL BRIEF

*** * * ORAL ARGUMENTS REQUESTED * * ***

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STATEMENT OF JURISDICTIONAL BASIS

This is an appeal from the Court of Appeals' opinion entered September 9, 2014, reversing the Muskegon County Circuit Court's denial of Appellee's motion to suppress for and unlawful seizure in violation of the Fourth Amendment. The prosecution filed its initial Application for Leave to Appeal on November 4, 2014, on the 56th day after the Court of Appeals filed its September 9, 2014, opinion. Jurisdiction is conferred by MCL 600.215(3) and MCR 7.301(A)(2).

STATEMENT OF QUESTIONS INVOLVED

I. DOES A BALL AND SOCKET TRAILER HITCH POSITIONED IN A MANNER WHICH REQUIRES A VIEWER REPOSITION HIMSELF IN ORDER TO VIEW A SINGLE DIGIT ON A VEHICLE REGISTRATION PLATE CONSTITUTE "FOREIGN MATERIALS" THAT PARTIALLY OBSCURE REGISTRATION INFORMATION CONTRARY TO MCL 257.225(2)?

Defendant-Appellee Answers: YES.

The Court of Appeals Answered: YES.

Plaintiff-Appellant Answers: NO.

The Circuit Court Answered: NO.

II. WHETHER THE COURT OF APPEALS' OPINION SHOULD BE AFFIRMED WHERE APPELLANT FORFEITED THE REMAINING ISSUES PRESENTED TO THIS COURT BY FAILING TO RAISE THEM IN THE TRIAL COURT OR IN THE COURT OF APPEALS?

Defendant-Appellee Answers: YES.

The Court of Appeals Answered: YES.

Plaintiff-Appellant Answers: NO.

The Circuit Court Answered: NO.

III. DO DEPUTIES MANUFACTURE REASONABLE SUSPICION SUCH THAT THEIR CONDUCT DOES NOT CONSTITUTE AN OBJECTIVELY REASONABLE MISTAKE OF FACT WHERE THEY KNEW THAT A VEHICLE REGISTRATION NUMBER IS ONLY ONE OF TWO POSSIBLE ALPHANUMERIC SEQUENCES AND THEY CONDUCT A COMPUTER QUERY FOR ONLY ONE OF THE TWO SEQUENCES BEFORE EFFECTUATING A SEIZURE?

Defendant-Appellee Answers: YES.

The Court of Appeals Answered: YES.

Plaintiff-Appellant Answers: NO.

The Circuit Court Answered: NO.

STATEMENT OF QUESTIONS INVOLVED (CONT'D)

IV. IT IS OBJECTIVELY UNREASONABLE FOR DEPUTIES TO CONCLUDE AS A MATTER OF LAW THAT A BALL AND SOCKET TRAILER HITCH POSITIONED SO THAT IT REQUIRES THEM TO REPOSITION THEMSELVES IN ORDER TO VIEW A SINGLE DIGIT ON A VEHICLE REGISTRATION PLATE CONSTITUTES "FOREIGN MATERIALS" THAT PARTIALLY OBSCURE THE REGISTRATION INFORMATION CONTRARY TO MCL 257.225(2), AND IF IT WAS OBJECTIVELY UNREASONABLE TO DRAW SUCH A CONCLUSION, THEN IS MCL 257.225(2) UNENFORCEABLE DUE TO IT BEING VOID FOR VAGUENESS?

Defendant-Appellee Answers: YES.

The Court of Appeals Answered: YES.

Plaintiff-Appellant Answers: NO.

The Circuit Court Answered: NO.

V. DOES THE EXCLUSIONARY RULE REQUIRE THE SUPPRESSION OF EVIDENCE WHERE DEPUTIES OBSERVE A BALL AND SOCKET TRAILER HITCH POSITIONED SO THAT IT REQUIRES THEM TO REPOSITION THEMSELVES IN ORDER TO VIEW A SINGLE DIGIT ON A VEHICLE REGISTRATION PLATE, THEN MANUFACTURE REASONABLE SUSPICION BY CONDUCTING A COMPUTER QUERY FOR ONLY ONE OF TWO POSSIBLE ALPHANUMERIC SEQUENCES DISPLAYED ON THE REGISTRATION PLATE, AND THEN UNLAWFULLY SEIZE THE DRIVER ON THE BASIS THAT THE TRAILER HITCH CONSTITUTES "FOREIGN MATERIALS" THAT PARTIALLY OBSCURE THE REGISTRATION INFORMATION CONTRARY TO MCL 257.225(2)?

Defendant-Appellee Answers: YES.

The Court of Appeals Answered: YES.

Plaintiff-Appellant Answers: NO.

The Circuit Court Answered: NO.

STATEMENT OF FACTS

A. Introduction

This is an appeal from the Muskegon County Circuit Court's denied of Appellee's motion to suppress due to a lack of reasonable suspicion to conclude that criminal activity was afoot.

B. Facts

On October 12, 2012, Muskegon County Sheriff's Deputies James Ottinger and Jason Van Andel were on routine patrol in Muskegon Heights, where "most of the residents . . . are African Americans." Motion to Hearing Transcript ("MHT"), pp 6-7, 42-43. Both deputies were dressed in full regalia with Deputy Ottinger driving and Deputy Van Andel riding as passenger in a marked patrol vehicle. *Id*. at 7.

At approximately 1:00 a.m., the deputies were driving northbound on 6th Street when they observed a 1990 Ford Ranger pick-up truck operated by Appellee Charles Dunbar traveling eastbound on West Hackley Avenue. *Id*. at 7, 26. Although Mr. Dunbar lawfully passed through the intersection without the deputies observing any infractions, the deputies turned right and began following Mr. Dunbar's truck as it continued eastbound on West Hackley Avenue. *Id*. at 8, 12, 23. Deputy Ottinger increased the speed of the marked patrol vehicle to "close the gap" between the vehicles in an effort to observe the registration plate on Mr. Dunbar's truck so the deputies could query the Law Enforcement Information Network[1] which they often did while "doing a proactive patrol."[2] *Id*. at 8, 14, 26. The deputies followed Mr. Dunbar's vehicle for

[1] The Law Enforcement Information Network ("LEIN") "is the communication network that supplies information sharing for Michigan criminal justice agencies, the portal that links to and provides access to various state and national databases and the hot files." Ad R 28.5101(j). See also, MCL 28.258(e).

[2] Operators of motor vehicles do not have a reasonable expectation of privacy in their openly displayed registration plates, so police may lawfully conduct a computer check of a vehicle's registration plate even though no traffic violation has been observed. *People v Jones*, 260 Mich App 424, 427-429; 678 NW2d 627 (2004). Thus, the deputies query of the LEIN is not at issue in this case.

one block when Mr. Dunbar slowed down as he approached a traffic light, and the distance between his truck and the deputies' patrol car decreased. *Id*. at 8, 15, 34. The registration plate on Mr. Dunbar's truck was properly illuminated, but due to the presence of the ball portion of a ball-and-socket coupling system that was lawfully attached to the truck's rear bumper, the deputies were able to readily observe from their vantage point only 6 of the 7 alphanumeric characters displayed on the truck's registration plate. *Id*. at 8-9, 18, 23, 34. However,

Deputy Van Andel, who was operating the computer in the patrol vehicle, was able to discern that the numeral was either a 5 or a 6, so queried the LEIN for information regarding the registration number of Mr. Dunbar's truck using 5 as the digit, *i.e*., CHS 5818. *Id*. at 8, 18, 23, 25, 28, 31. Although the query response time of the LEIN varied, the computer response time "was quick," so deputy Van Andel received the LEIN response to his query "within a second or two." *Id*. at 8, 13. The LEIN response indicated that registration plate number was registered to a 2007 Chevrolet Equinox in Lansing, Michigan, not a 1990 Ford Ranger pick-up truck. *Id*. at 8, 23, 24-25. Deputy Ottinger stated that he was going to stop Mr. Dunbar for the obstructed registration plate then activated the overheard lights on the deputies' marked patrol vehicle. *Id*. at 9-10, 23.

The deputies were unable to discern this single digit while "sitting in [the] patrol car with the distance between the vehicle[s]," but after Mr. Dunbar stopped his vehicle, the deputies alighted from their patrol vehicle, and as they began to approach Mr. Dunbar's truck they observed that the digit was in fact a 6 and not a 5, *i.e*., the registration number of Mr. Dunbar's truck was CHS 6818 not CHS 5818. *Id*. at 9, 16-17, 23.

C. Trial Court Proceedings

On January 15,2013, Mr. Dunbar filed a Motion to Suppress Evidence, seeking suppression of the evidence that was discovered during the investigatory stop. On January 24, 2013, the trial court conducted an evidentiary hearing at which it heard testimony from both Deputy Ottinger and Deputy Van Andel. After hearing the deputies' testimony, the trial court heard oral arguments but did not immediately rule from the bench. MNT, p 58. On January 30, 2013, the trial court issued an Opinion and Order, denying Mr. Dunbar's motion to suppress.

D. Trial Court Proceedings

On February 20, 2013, Mr. Dunbar filed an Application for Leave to Appeal to the Court of Appeals. On August 19, 2013, the Court of Appeals granted leave to appeal. On September 9, 2014, the Court of Appeals issued an opinion for publication, reversing the trial court judge. See, *People v Dunbar*, 306 Mich App 562; 857 NW2d 280 (2014) (attached as **Appendix A)**. Judge Shapiro wrote the lead opinion, noting that "[t]he prosecution concedes that when the officers initiated the traffic stop they had no basis to believe that defendant was engaged in any criminal conduct." *Id*. at 564-65. "In addition, the officers testified that defendant was driving safely, they did not see him violate any traffic laws governing vehicle operation, and he did not engage in any suspicious behavior." *Id*. at 565. Rather, "the sole basis for the stop was their conclusion that defendant was violating a traffic law, MCL 257.225(2), which provides in pertinent part that '[a vehicle's license] plate shall be maintained free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition.'" *Id*. (interpolation added by Dunbar court). Judge Shapiro concluded "that the circumstances observed by the officers did not constitute a violation of this statute."

Judge Shapiro articulated the *ratio decidendi* of his opinion as follows:

> Common experience reveals that thousands of vehicles in Michigan are equipped with trailer hitches and towing balls. The prosecution argues, however, that the presence of that equipment behind a license plate is a violation of MCL 257.225(2) and, therefore, the officers had proper grounds to conclude that a traffic law was being violated. However, the mere presence of a towing ball is not a violation of MCL 257.225(2). The statute provides that "[*t]he plate* shall be maintained free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition." (Emphasis added.) The statute makes no reference to trailer hitches, towing balls, or other commonly used towing equipment that might partially obscure the view of an otherwise legible plate. There is no evidence that *the plate* on defendant's truck was not maintained free of foreign materials. There is similarly no evidence that defendant's plate was dirty, rusted, defaced, scratched, snow-covered, or otherwise not "maintained" in legible condition. The plate was well lit and in essentially pristine condition. Moreover, the officers agreed that the plate was legible, a fact confirmed by the photos taken at the scene.
>
> In this case, the officers did not have grounds to believe that defendant was in violation of MCL 257.225(2) and they, as well as the prosecution, agree there was no other basis for the stop. Accordingly, we reverse the trial court's denial of defendant's motion to suppress the contraband seized during an automobile search conducted in violation of the Fourth Amendment. *Whren*, 517 US at 809–810, 116 S Ct 1769. [*Dunbar*, 306 Mich App at 565-66.]

Judge O'Connell concurred in the result but wrote separately "to state that MCL 257.225(2) is ambiguous." *Dunbar*, 306 Mich App at 566. Judge O'Connell explained his rationale as follows:

> [T]he statute casts a net so wide that it could be construed to make ordinary car equipment illegal, including equipment like bicycle carriers, trailers, and trailer hitches. This broad construction would render the statute unconstitutionally vague for failure to provide fair notice of the conduct the statute purports to proscribe. [*Id*.]

Because a Court is required to construe statutes as constitutional if possible, Judge O'Connell "would interpret MCL 257.225(2) to require only that the *registration plate itself* be maintained free from materials that obscure the registration information and that the *plate itself* be in a clearly legible condition." *Id*. at 566-67 (emphasis in original). Judge O'Connell thus

concluded that the trial court decision must be reversed because "there is no evidence of any obstruction affixed to defendant's registration plate" and thus "no evidence that defendant was in violation of MCL 257.225(2) . . . ." *Id*. at 568.

Judge Meter dissented, noting at the outset that the deputies "found cocaine, marijuana, and a handgun" during the search.[3] *Id*. at 568. Judge Meter's dissenting opinion focuses solely on the fact that the registration plate on Mr. Dunbar's vehicle was "obstructed" and completely ignored other language in the statute such the requirement that the obstruction be caused by "foreign materials." *Id*. at 569-70. Judge Meter further opined that "[i]t is simply unreasonable to expect police officers to essentially 'weave' within a lane in order to view the entire registration plate of a vehicle" despite the fact that (1) the Michigan Vehicle Code requires only that a vehicle be driven "as nearly as practicable" within its lane, MCL 257.642(1)(a), (2) the Michigan Vehicle Code permits drivers to operate their vehicles outside of their lane so long as "the movement can be made with safety," *id*., and (3) it is perfectly legal for Michigan drivers to weave within his or her own lane without violating the Motor Vehicle Code.[4] See, *e.g*., *United States v Gross*, 550 F3d 578 (CA 6, 2008).

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[3] Judge Meter's mention of this fact is somewhat troubling because it is axiomatic that an otherwise unlawful search cannot be legitimized by the evidence it reveals. See, *e.g*., *Smith v Ohio*, 494 US 541, 543; 110 S Ct 1288; 108 LEd2d 464 (1990); *Bumper v State of North Carolina*, 391 US 543, 547 fn 10; 88 S Ct 1788; 20 L Ed 2d 797 (1968). Focusing on such *post hoc* facts gives the appearance that Judge Meter may have been more concerned that "(t)he criminal is to go free because the constable has blundered,'" *Mapp v Ohio*, 367 US 643, 659; 81 S Ct 1684; 6 L Ed 2d 1081 (1961), and gives the appearance of an improper ends-justifies-the-means type of analysis.

[4] Significantly, in a case cited extensively by the prosecution, *People of Canton Twp v Wilmot*, unpublished opinion *per curiam* of the Court of Appeals, issued March 7, 2013 (Docket No. 305308); 2013 WL 951109 (attached as **Appendix B**), "[t]he officer maneuvered his police cruiser to the right in an attempt to see around the hitch ball and view the full license plate number." *Id*. at *1. "From that vantage point, the officer read the license plate as best he could, entering the plate's information into the Law Enforcement Information Network (LEIN) via his computer in order to determine, in part, if the license plate matched defendant's truck." *Id*. Similarly, in another case cited by the prosecution, *United States v Ratcliff*, unpublished opinion of the United States District Court for the Eastern District of Tennessee, issued September 25, 2006 (No. 1 :06-cr-55); 2006 WL 2771014 the officer "[e]ventually, by maneuvering slightly to his left and thereby changing his line of sight . . . was able to make out the entire sequence of letters and numerals on the license tag and was able to run the number through his radio dispatch system." 2006 WL 2771014, at *1. Thus, although Judge Meter believed that it was "simply unreasonable to expect police officers to essentially 'weave' within a lane in order to view the entire license plate of a vehicle," that selfsame action appears to have been the intuitive course of action taken by the police officer in *Wilmot*, and it effectively remedied

Judge Meter also dissented, finding Judge Shapiro and Judge O'Connell's interpretation of MCL 257.225(2) "not a reasonable reading of the statute," because Judge Shapiro and Judge O'Connell's construction of the statute's language requiring that "*[t]he plate* shall be maintained free from foreign materials . . . and in a clearly legible condition" concerned only items that touch the plate itself. *Id*. at 570. Significantly, Judge Meter did not based his rejection of Judge Shapiro and Judge O'Connell's rationales based on any statutory language contained in MCL 257.225(2). Rather, Judge Meter rejected Judge Shapiro and Judge O'Connell's rationales based on a wholly hypothetical question that Judge Meter created from whole cloth: "What if, for example, a person attached a sort of shield that entirely covered his or her registration plate but did not touch the plate itself?" *Id*. After erecting this straw man, Judge Meter knocked it back down by holding that "[a] registration plate that is in otherwise perfect condition but cannot be read because of obstructing materials is not being 'kept' in 'a clearly legible condition.'"[5] *Id*.

E. Michigan Supreme Court Proceedings

On November 4, 2014, the prosecution filed with the Clerk of this Court an Application for Leave to Appeal on the 56th day after the Court of Appeals filed its September 9, 2014, opinion. On March 25, 2015, this Court entered an Order considering the prosecution's Application for Leave to Appeal, directing the Clerk to schedule oral argument on whether to

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the issue in *Ratcliff*. Perhaps most importantly, however, in *State v Ronau*, unpublished opinion of the Court of Appeals of Ohio, issued December 6, 2002 (Docket No. L-02-1147); 2002 WL 31743012 (attached as **Appendix C**) the Court of Appeals of Ohio ruled that an officer's ability to reposition himself so as to view a registration plate, notwithstanding a ball trailer hitch that partial obscures the registration plate, effectively vitiates any claim that a traffic violation even happened. *Id*. at *3 ("Trooper Miller further testified that the extent to which the plate was obscured by the trailer hitch differed according to his position behind appellee's car from side to side as well as the distance between the two cars. Based on the foregoing, this court finds that the trial court did not err by finding that the stop was not lawful because Trooper Miller did not demonstrate a reasonable, articulable suspicion that appellee had violated the law. Accordingly, appellant's third assignment of error is not well-taken.")

[5] Interestingly, Judge Meter freely interjected this hypothetical in order to advance his argument to conclusion, yet he abstained from addressing the difficult question "whether a properly licensed, attached trailer that obscures a vehicle's license plate would be grounds for a traffic stop" on the basis that the question "is not in issue here . . . ." *Dunbar*, 306 Mich App at 570 n3. Judge Meter's dissenting opinion fails to explain how an attached trailer that obscures a vehicle's license plate "is not in issue here" while "a sort of shield that entirely covered his or her license plate but did not touch the plate itself" was somehow in issue in this case.

grant the application or take other action, and ordering the parties to file supplemental briefs "addressing whether the license plate affixed to the defendant's vehicle violated MCL 257.225(2) where it was obstructed by a towing ball, thereby permitting law enforcement officers to conduct a traffic stop of the defendant's vehicle." *People v Dunbar*, __ Mich __; 860 NW2d 625 (2015).

STANDARD OF REVIEW

Questions of constitutional law are reviewed *de novo*. *People v Harper*, 479 Mich 599, 610; 739 NW2d 523 (2007). Issues of statutory interpretation are also reviewed *de novo*. *Speicher v Columbia Tp Bd of Trustees*, 497 Mich 125, 133; 860 NW2d 51 (2014).

ARGUMENTS

I. A BALL AND SOCKET TRAILER HITCH POSITIONED IN A MANNER WHICH REQUIRES A VIEWER TO REPOSITION HIMSELF IN ORDER TO VIEW A SINGLE DIGIT ON A VEHICLE REGISTRATION PLATE DOES NOT CONSTITUTE "FOREIGN MATERIALS" THAT PARTIALLY OBSCURE REGISTRATION INFORMATION CONTRARY TO MCL 257.225(2), SO THE SEIZURE EFFECTUATED ON THIS BASIS WAS UNLAWFUL.

A. Fourth Amendment Touchstone

The Fourth Amendment to the United States Constitution guarantees the right of individuals to be secure against unreasonable searches and seizures. US Const, Am IV. "A traffic stop for a suspected violation of law is a 'seizure' of the occupants of the vehicle and therefore must be conducted in accordance with the Fourth Amendment." *Heien v North Carolina*, __ US __, __; 135 S Ct 530, 536; 190 L Ed 2d 475 (2014). Pursuant to the Fourth Amendment, "searches conducted outside the judicial process, without prior approval by judge

or magistrate, are per se unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions." *Arizona v Gant*, 556 US 332, 338; 129 S Ct 1710; 173 L Ed 2d 485 (2009) (citation, internal quotation marks, and emphasis omitted). See also, *People v Davis*, 442 Mich 1, 10; 497 NW2d 910, 914 (1993). "The exceptions are 'jealously and carefully drawn,' and there must be 'a showing by those who seek exemption . . . that the exigencies of the situation made that course imperative.'" *Coolidge v New Hampshire*, 403 US 443, 455; 91 S Ct 2022; 29 L Ed 2d 564 (1971) (footnote omitted; citation omitted). See also, *People v Crawl*, 401 Mich 1, 21; 257 NW2d 86 (1977). "When a defendant moves to suppress evidence as having been illegally obtained, it is the prosecutor's burden to show that the search and seizure were justified by a recognized exception to the warrant requirement." *People v Jordan*, 187 Mich App 582, 589; 468 NW2d 294 (1991). "[W]hen the State fails to meet its burden of justification, the courts have *a duty* to suppress the admission into evidence of the fruits of the search." *People v Heard*, 65 Mich App 494, 498; 237 NW2d 525 (1975) (emphasis added).

B. Investigatory Stop Exception

The exception to the Fourth Amendment at issue here is the investigatory stop exception recognized in *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968). In order to justify a traffic stop for a suspected violation of law, "officers need only 'reasonable suspicion' – that is, 'a particularized and objective basis for suspecting the particular person stopped' of breaking the law." *Heien*, __ US at __; 135 S Ct at 536. "The officer, of course, must be able to articulate something more than an "inchoate and unparticularized suspicion or 'hunch.'" *United States v Sokolow*, 490 US 1, 7; 109 S Ct 1581; 104 L Ed 2d 1 (1989) (quotations omitted).

C. Michigan's Registration Plate Statute

According to the deputies' testimonies, the particularized and objective basis for suspecting Mr. Dunbar of unlawful activity was that Mr. Dunbar was violating Michigan's statute against obstructing a vehicle's registration plate. When the deputies effectuated the stop, Section 225 of the Michigan Vehicle Code provided:[6]

> (1) A registration plate issued for a vehicle shall be attached to the rear of the vehicle. Except that a registration plate issued for a truck tractor or road tractor shall be attached to the front of that vehicle.
>
> (2) A registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which the plate is issued so as to prevent the plate from swinging. *The plate* shall be attached at a height of not less than 12 inches from the ground, measured from the bottom of the plate, *in a place and position which is clearly visible. The plate* shall be maintained free from *foreign materials* that obscure or partially obscure the registration information, and in a *clearly legible condition.*
>
> (3) A registration plate or the expiration tab on the registration plate shall be of a different color designated by the secretary of state with a marked contrast between the color of the registration plate and the numerals or letters on the plate. The secretary of state may provide distinctive registration plate as a replacement for a standard plate. To honor a special or historical event, the secretary of state may provide a commemorative plate as a replacement for a standard plate.
>
> (4) A person shall not attach a name plate, insignia, or advertising device to a motor vehicle registration plate in a manner which obscures or partially obscures the registration information.
>
> (5) A person shall not operate a motor vehicle which has a name plate, insignia, or advertising device attached to a motor vehicle registration plate in a manner which obscures or partially obscures the registration information.
>
> (6) A person who violates this section is responsible for a civil infraction. [MCL 257.225(1)-(6) (all emphasis added).]

[6] This section was amended by 2014 PA 26 effective March 4, 2014, which made some minor grammatical changes and added a subsection exempting some historic military vehicles from the requirement that registration plates be attached to the rear of the vehicle.

In interpreting statutes, this Court adheres to established rules of statutory construction. *People v Jackson*, 487 Mich 783, 790; 790 NW2d 340 (2010). "[T]he purpose of statutory construction is to discern and give effect to the intent of the Legislature." *Id*. (footnote omitted). "Accordingly, the Court must interpret the language of a statute in a manner that is consistent with the legislative intent." *Id*. at 790-91 (footnote omitted). "In determining the legislative intent, [this Court] must first look to the actual language of the statute." *Id*. at 791 (footnote omitted). "As far as possible, effect should be given to every phrase, clause, and word in the statute." *Id*. (footnote omitted). "Moreover, the statutory language must be read and understood in its grammatical context." *Id*. (footnote omitted). "When considering the correct interpretation, the statute must be read as a whole." *Id*. (footnote omitted). "Individual words and phrases, while important, should be read in the context of the entire legislative scheme." *Id*. (footnote omitted). "In defining particular words within a statute, we must consider both the plain meaning of the critical word or phrase and its placement and purpose in the statutory scheme." *Id*. (footnote omitted). "The words of a statute are the most reliable indicator of the Legislature's intent and should be interpreted according to their ordinary meaning and the context within which they are used in the statute." *People v Smith*, 496 Mich 133, 138; 852 NW2d 127 (2014) (footnote omitted). "Once the Legislature's intent has been discerned, no further judicial construction is required or permitted, as the Legislature is presumed to have intended the meaning it plainly expressed." *Id*. (footnote omitted).

1. Registration Plate Placement and Positioning

The second sentence provides: "*The plate* shall be attached at a height of not less than 12 inches from the ground, measured from the bottom of the plate, *in a place and position which is*

clearly visible."[7] MCL 257.225(2) (all emphasis added). As with all three sentences in this subsection, the subject of this sentence is the registration plate. The verb "shall be attached" describes the action affecting the registration plate, and the following object with its compliments explains the manner in which the registration plate "shall be attached" to the vehicle.

The prosecution posits the broadsweeping argument that this sentence "means that the plate must be positioned so that it is clearly visible, meaning, of course, so that its visibility is not blocked or obstructed." See, Plaintiff-Appellant's Application for Leave to Appeal, pp 6-7. However, the plain language of this statute does not lend itself to such a broadsweeping interpretation. This sentence states that a registration plate must be attached to a vehicle "in a place and position which is clearly visible."

"The drafters of statutes are presumed to know the rules of grammar," *Greater Bethesda Healing Springs Ministry v Evangel Builders & Const Managers, LLC*, 282 Mich App 410, 414; 766 NW2d 874 (2009), and "'the Legislature is presumed to act with knowledge of statutory interpretations by the Court of Appeals and this Court.'" *People v McKinley*, 496 Mich 410, 432-33; 852 NW2d 770 (2014). Pursuant to the Last Antecedent Rule of statutory construction, "a modifying or restrictive word or clause contained in a statute is confined solely to the immediately preceding clause or last antecedent, unless something in the statute requires a different interpretation." *Duffy v Michigan Dept of Natural Res*, 490 Mich 198, 220-21; 805 NW2d 399 (2011). Thus, the modifying or restrictive words or clause "which is clearly visible" is confined solely to the immediately preceding clause or last antecedent, *i.e.*, the compound noun "place and position." Consequently, it is the "place and position" where the license plate is

[7] The Subsection at issue, Subsection two, consists of three sentences. The first sentence addresses how registration plates must be securely fastened to vehicles and is not at issue in this matter.

attached to a vehicle that must be "clearly visible" and not necessarily the registration plate itself, the manner in which the registration plate must be maintained being addressed in the following sentence. This construction makes sense considering that the subject matter of this sentence addresses the *placement* and *positioning* of a registration plate *on a motor vehicle* and not the condition of the registration plate itself.[8] *Cf.*, *Girard v Wagenmaker*, 437 Mich 231, 238-39; 470 NW2d 372 (1991) (""[L]egislative intent can be ascertained from examining . . . the subject matter under consideration . . . .")

Had the Legislature desired for the modifying or restrictive words "which is clearly visible" to apply to the noun phrase "the plate" instead of the compound noun "place and position," it would have simply written this sentence to read: "The plate shall be attached at a height of not less than 12 inches from the ground, measured from the bottom of the plate, *so it is* in a place and position which is clearly visible."[9] MCL 257.225(2) (all emphasis added). "[T]he Legislature could have said so, but it did not." *Stand Up v Sec'y of State*, 492 Mich 588, 610 n40; 822 NW2d 159 (2012). See also, *Brightwell v Fifth Third Bank of Mich*, 487 Mich 151, 166; 790 NW2d 591 (2010). Had the Legislature intended this meaning, it would have simply added three simple words to the statute – "so it is." "This Court cannot assume that language chosen by the Legislature is inadvertent." *Bush v Shabahang*, 484 Mich 156, 169; 772 NW2d 272 (2009).

[8] The deputies testified in the trial court that the registration plate on Mr. Dunbar's truck was clearly visible and properly illuminated, but a single numeral in the registration plate number was partial obscured from their particular vantage point. MHT, pp 8-9, 18, 23, 34. There is nothing in the deputies' testimony that the *positioning* of the registration plate on Mr. Dunbar's motor vehicle was somehow inappropriate or that it otherwise entered into their calculus when deciding whether to conduct their investigatory stop.

[9] The Subsection at issue, Subsection two, consists of three sentences. The first sentence addresses how registration plates must be securely fastened to vehicles and is not at issue in this matter.

2. Registration Plate Maintenance

The third and last sentence comprising subsection two provides that "*[t]he plate* shall be maintained *free from* for*eign materials* that obscure or partially obscure the registration information, and in a clearly legible condition." MCL 257.225(2) (all emphasis added). The subject of this sentence is again the registration plate. The verb "shall be maintained" describes the action affecting the registration plate, and the object of the sentence that follows explains the manner in which the registration plate "shall be maintained," namely (1) "free from foreign materials that obscure or partially obscure the registration information" and (2) "in a clearly legible condition."

With regards to the first duty imposed by this sentence – to maintain registration plates free from foreign materials that obscure or partially obscure the registration information – Judge Shapiro correctly concluded that "[t]here is no evidence that *the plate* on defendant's truck was not maintained free of foreign materials." *Dunbar*, 306 Mich App at 566 (emphasis in original). With regards to the second duty imposed by this sentence – to maintain registration plates free in a clearly legible condition – Judge Shapiro again correctly concluded that "[t]here is similarly no evidence that defendant's plate was dirty, rusted, defaced, scratched, snow-covered, or otherwise not 'maintained' in legible condition." *Id*.

a. <u>Shall Be Maintained</u>

The prosecution challenges Judge Shapiro's ruling regarding the duty to maintain registration plates free from foreign materials that obscure or partially obscure the registration information by arguing that Judge Shapiro was so myopically focused on the noun phrase "the plate" that he "erroneously limited the term 'maintain' to mean the physical state of the plate itself rather than to include 'keep[ing the plate] unimpaired' or 'to keep in a specified . . .

position.'" See, Plaintiff-Appellant's Application for Leave to Appeal, p 7. Substituting the purportedly synonymous phrase "to keep in a specified position" for the verb phrase "shall be maintained," the prosecution construes this sentence to mean "to keep in a specified position free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition." *Id*. (internal quotations omitted). This argument is incorrect for several reasons.

This Court has repeatedly criticized the practice of hand-selecting dictionaries with the most convenient definition in order to best advance a party's argument.[10] In order to overcome this analytical gamesmanship, this Court has provided guidance to help chose among several competing definitions. Given divergent definitions, a court must choose one *that most closely effectuates the author's intent*. *Stanton v City of Battle Creek*, 466 Mich 611, 618; 647 NW2d 508 (2002). "[B]ecause a word can have many different meanings *depending on the context in which it is used*, and because dictionaries frequently contain multiple definitions of a given word, in light of this fact, *it is important to determine the most pertinent definition of a word in light of its context."* *Feyz v Mercy Mem'l Hosp*, 475 Mich 663, 685; 719 NW2d 1 (2006) (all emphasis added). "[W]hat is critical to our analysis is that "[w]ords are given meaning by context or setting." *Id*.

[10] For example, in *People v Raby*, 456 Mich 487; 572 NW2d 644 (1998), Justice Cavanaugh noted in his dissenting opinion that Justice Markman "was willing to leave no dictionary unturned" in order to justify the ruling in his concurring opinion. *Id*. at 501 (Cavanagh, J., dissenting). Several years later in his dissenting opinion in *McCormick v Carrier*, 487 Mich 180; 795 NW2d 517 (2010), Justice Markman retorted: "I find it interesting that [Justice Cavanagh] once chastised me for "leav[ing] no dictionary unturned," with regards to an opinion in which I cited *two* different dictionaries, and, here, he cites *seven* different dictionaries and still cannot quite find a definition that serves his purpose." *Id*.at , 249 n23 (Markman, J., dissenting; emphasis in original). In *Jones v Olson*, 480 Mich 1169; 747 NW2d 250 (2008), Justice Weaver further lamented cherry-picking select definitions in order to justify juridical ends, characterizing it as "barely hidden judicial activism." See also, *McCormick v Carrier*, 487 Mich 180, 203–204; 795 NW2d 517 (2010) ("Moreover, of these 10 definitions, the majority chose the most restrictive, even though, as discussed above, it does not make the most sense in this context.")

The prosecution's Application for Leave to Appeal cites the first three of seven definitions for the transitive verb "maintain" set forth in *The Random House College Dictionary* (rev ed, 1984), a relatively unpopular dictionary over 30 years old apparently no longer in print, which defines maintain as follows:[11]

> 1. to keep in existence or continuance; preserve; retain. 2. to keep in due condition, operation, or force; keep unimpaired. 3. to keep in a specified state, position, etc. [*The Random House College Dictionary*. p 807 (all emphasis added).]

As relevant here, the *Merriam-Webster's Collegiate Dictionary* (11th ed, 2006) defines maintain as "*to keep* in an existing state (as of repair, efficiency, or validity) : preserve from failure or decline (- machinery)." *Id*. at 749 (emphasis added).

The *Longman Dictionary of American English* (4th ed 2008) defines maintain in pertinent part as:

> **main·tain** /meIn'teIn/ **Ac v** [T] **1** to make something continue in the same way or at the same standard as before: *The US and Britain have maintained close ties.* | *It is important to maintain a healthy weight.* | *Strong controls must be maintained over important wildlife habitats.* **2** to keep something in good condition by taking care of it: *It costs a lot of money to maintain a big house.* | *The report found that safety equipment had been very poorly maintained.* [*Id*. at 611 (all emphasis in original).]

The American Heritage Dictionary of the English Language (3rd ed, 1992) defines maintain in relevant portion as:

> 1. To keep up or carry on; continue: *maintain good relations.* 2. To keep in an existing state; preserve or retain: *maintain one's composure.* 3. To keep in a condition of good repair or efficiency: *maintain two cars.* [*Id*. (all emphasis in original).]

[11] In its more recent *Random House Webster's Unabridged Dictionary* (2nd ed 2005), Random House continues to define the word maintain almost verbatim to that set forth in *The Random House College Dictionary* (rev ed, 1984).

Significantly, all of the pertinent definitions deal with how a person is "to keep" an object, including but not limited to keeping the object "in due condition,"[12] "in good condition by taking care of it,"[13] "unimpaired,"[14] "in a specified state, position, etc.,"[15] "in an existing state,"[16] "in the same way or at the same standard as before,"[17] "in good condition by taking care of it,"[18] and "in a condition of good repair or efficiency."[19] Contrary to the prosecution's argument, however, the complements following the infinitive "to keep" in these definitions are not pertinent to the present analysis because the modifiers in statutory language itself describe the manner in which a registration must be maintained or kept, namely "free from foreign materials that obscure or partially obscure the registration information, and in a clearly legible condition."

Assuming *arguendo* that the complements following the infinitive "to keep" in these definitions could supplant the modifying language that the Legislature employed in MCL 257.225(2) describing how registration plates must be maintained or kept, the prosecution's argument still fails. As a threshold matter, the same dictionary cited by the prosecution, *The Random House College Dictionary* (rev ed, 1984), defines "impaired" as "to make or cause to become worse; diminish in value, excellence, etc; weaken or damage" or "to grow or become worse, lessen." See also, *Random House Webster's Unabridged Dictionary* (2nd ed 2005) (defining "impaired" in pertinent part as "weakened, diminished, or damaged" or "functioning poorly or inadequately.") Attaching a ball hitch onto a vehicle's rear bumper such as that

[12] *The Random House College Dictionary* (rev ed, 1984).
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Merriam-Webster's Collegiate Dictionary* (11th ed, 2006); *American Heritage Dictionary of the English Language* (3rd ed, 1992).
[17] *Longman Dictionary of American English* (4th ed 2008).
[18] *Id.*
[19] *American Heritage Dictionary of the English Language* (3rd ed, 1992).

described by the deputies in this case does not make or cause a registration plate to become worse, diminish in value, weaken or damage the plate, or cause the plate to grow or become worse, lessen. Thus, the definition "unimpaired" does not apply in this instance.

Likewise, the prosecution's argument that the prepositional phrase "to keep in a specified position" may supplant the verb "maintain" used in MCL 257.225(2) does not advance the prosecution's position. As noted above, the position specified by the second sentence of MCL 257.225(2) is "in a place and position which is clearly visible," and as further noted above, the modifying or restrictive words or clause "which is clearly visible" is confined solely to the immediately preceding clause or last antecedent, *i.e.*, the compound noun "place and position." Thus, it is the "place and position" which must be "clearly visible" and not necessarily the registration plate itself. At best, supplanting the verb phrase "shall be maintained" in the statute with the prepositional phrase "to keep in a specified position" (and adjusting this phrase to match the past tense of the language in the statute) results in the sentence: "*The plate* shall be kept in a specified position free from *foreign materials* that obscure or partially obscure the registration information, and in a *clearly legible condition*. Again, however, pursuant to the last antecedent rule, the modifying and restrictive language "free from foreign materials that obscure or partially obscure the registration information" and "in a clearly legible condition" is confined solely to the immediately preceding clause or last antecedent, *i.e.*, the prepositional phrase "in a specified position," so again, it is the "specified position" (which ironically is not specified at all) which must be kept in a specified position free from foreign materials that obscure or partially obscure the registration information, and in a clearly legible condition.

b. Free From

The prosecution's argument ignores the language "free from" and the manner in which it describes the relationship between the registration plate and the foreign materials obstructing it. The *Merriam-Webster's Collegiate Dictionary* (11th Ed, 2005) defines the adjective "free" for present purposes as "relieved from or lacking something and especially something unpleasant or burdensome <*free* from pain>." *Id*. at 498. This same reference defines the preposition "from" as "physical separation or an act or condition of removal, abstention, exclusion, release, subtraction, or differentiation <protection ~ the sun> <relief ~ anxiety>." *Id*. at 503-03. Thus, in order for a registration plate to be "free from" foreign materials, the registration plate must be relieved from or lacking something by physical separation or an act or condition of removal.

The Random House Webster's Unabridged Dictionary (2nd ed 2005) defines the adjective "free" in pertinent part as "to exempt or deliver," "to relieve or rid," and "to disengage; clear"[20] and indicates that the preposition "from" is "used to express removal or separation, as in space, time, or order" or "used to express discrimination or distinction." Therefore, again in order for a registration plate to be "free from" foreign materials, the registration plate must be relieved, rid, or cleared of foreign materials by removal or separation in space.

Lastly, *The American Heritage Dictionary of the English Language* (3rd 1992) defines the adjective "free" in relevant portion as "[t]o remove obstructions or entanglements from; clean" and indicates that the preposition "from" is used to indicate "separation, removal, or exclusion" or "differentiation." Consequently, in order for a registration plate to be "free from" foreign materials, such materials must be separated or removed from the actual registration plate.

[20] Although *The Random House Webster's Unabridged Dictionary* (2nd ed 2005) offers 49 different definitions for this word, significantly, it indicates that these particular definitions are usually followed with the word "from" or "of" (*i.e.*, free from or free of) such as the "free from" language used in MCL 257.721(2).

c. Foreign Materials

Even more troubling, however, is the prosecution's complete absence of any analysis regarding the noun phrase "foreign materials," which is dispositive of this issue. All the prosecution offers in this regard is its cursory 10-word *ipse dixit*: "A trailer hitch would fit the definition of 'foreign materials.'" See, Plaintiff-Appellant's Application for Leave to Appeal, p 7.

As relevant here, the *Merriam-Webster's Collegiate Dictionary* (11th ed, 2005) defines the noun "material"[21] as "the elements, constituents, or substances of which something is composed or can be made" and defines the adjective "foreign" as "of, relating to, or proceeding from some other person or material thing than the one under consideration" or "alien in character: not connected or pertinent." *Id*. at 490, 765. Thus, according to this dictionary, "foreign materials" means "the elements, constituents, or substances of which something is composed or can be made" that is "of, relating to, or proceeding from some other . . . material thing than the one under consideration" or that is "alien in character: not connected or pertinent."

Similarly, the *Random House Webster's Unabridged Dictionary* (2nd ed 2005) defines the noun "material" in relevant portion:

> 1. the substance or substances of which a thing is made or composed: *Stone is a durable material.* 2. anything that serves as crude or raw matter to be used or developed: *Wood pulp is the raw material from which paper is made.*
> 3. any constituent element. . . . . 6. **materials**, the articles or apparatus needed to make or do something: *writing materials.*

This reference further defines the noun "foreign" in pertinent part:

> 8. belonging to or proceeding from other persons or things: a statement supported by foreign testimony. 9. not belonging to the place or body where found: foreign

[21] The fact that MCL 257.225(2) uses the plural "materials" is of no moment because "[e]very word importing the singular number only may extend to and embrace the plural number, and every word importing the plural number may be applied and limited to the singular number." MCL 8.3b. See also, *Isack v Isack*, 274 Mich App 259, 266; 733 NW2d 85(2007).

> matter in a chemical mixture. 10. not related to or connected with the thing under consideration: foreign to our discussion. 11. alien in character; irrelevant or inappropriate; remote. 12. strange or unfamiliar.

So again, according to the *Random House Webster's Unabridged Dictionary*, "foreign materials" means substances of which things are made or that serve as crude or raw matter to be used or developed in making something that are not related to or connected with the thing under consideration, alien in character, or strange or unfamiliar. See similarly, *Longman Dictionary of American English* (4th ed 2008) and *American Heritage Dictionary of the English Language* (3rd ed, 1992).

The ball portion of a trailer hitch does not constitute "materials" because it is not an element or substance of which something is composed or can be made. There simply is no such thing as a table, a chair, furniture, a car, etc made of ball trailer hitches. Nor are ball trailer hitches "foreign" because they do in fact belong in the place where found (*i.e.*, the rear bumper of a vehicle), they are related to or connected with the thing under consideration (*i.e.*, rear registration plates), so they are not alien, strange, or unfamiliar vis-à-vis rear registration plates.[22]

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[22] When construing statutes, this Court looks to, *inter alia*, case law from other states interpreting the same words. See, *e.g.*, *People v Pomeroy*, 419 Mich 441, 451; 355 NW2d 98 (1984), *overruled on other grds by People v Wood*, 450 Mich 399; 538 NW2d 351 (1995); *Lawrence Baking Co v Michigan Unemployment Comp Comm*, 308 Mich 198, 206; 13 NW2d 260 (1944). Courts in other jurisdictions employ the identical or very similar definitions when construing the word "material" or "materials." See, *e.g.*, *Diaz v Jaguar Rest Group, LLC*, 649 F Supp 2d 1343, 1354 (SD Fla 2009) ("They are indeed 'materials' that are defined in customary English usage as: '(1): the elements, constituents, or substances of which something is composed or can be made[;] something (as data) that may be worked into a more finished form[;] (2): apparatus necessary for doing or making something.'"); *Otis Elevator Co v Factory Mut Ins Co*, 353 F Supp 2d 274, 283 (D Conn 2005) ("Again, the parties agree on a basic definition of material as being an element or constituent substance of a larger item. . . . . It is an unreasonable artifice to interpret either 'stock' or 'material' to encompass Otis's tram . . . ."); *State v Sutton*, 217 P3d 1018 (Kan Ct App 2009) ("Material" is defined in part as 'the elements, constituents, or substances of which something is composed or can be made.'"), *rev'd in part in other grds* 294 Kan 149 (2012); *Schuetz v State Farm Fire & Cas Co*, 890 NE2d 374, 391 (2007) ("'Material,' meanwhile, is defined by Webster's Dictionary as 'the elements, constituents, or substances of which something is composed or can be made; something (as data) that may be worked into a more finished form; something used for or made the object of study.'"); *Mayhew v Indus Com'n*, 710 NE2d 909, 913 (1999) ("The word 'materials' is defined in Webster's Collegiate Dictionary as 'the elements, constituents, or substances of which something is composed or can be made.' . . . . We agree with the Commission that the word 'materials' is not an ambiguous term, but a collective noun, which describes a group of things."); *Peerless Ins Co v Gonzalez*, 17 Conn L Rptr 530 (Super Ct 1996) ("I conclude, finally, that lead paint is included within the definition of 'lead contained in ... materials' as well. Webster's Ninth New Collegiate Dictionary defines 'material' as 'the elements, constituents or

The language used by the Legislature in the Michigan Vehicle Code further bolsters this conclusion. "When considering the correct interpretation, the statute must be read as a whole." *Michigan Properties, LLC v Meridian Twp*, 491 Mich 518, 528; 817 NW2d 548 (2012). In Section 721 of the Motor Vehicle Code, the Legislature set forth standards for pickup trucks driven upon highways drawing or having attached vehicles or trailers. MCL 257.721(1). Subsection three of this statute addresses the manner in which a vehicle or trailer must be attached to a pick-up truck and provides in pertinent part:

> A vehicle or trailer towed or drawn by a vehicle *shall be attached to the vehicle with forms of coupling* ***devices*** in a manner so that when the combination is operated in a linear alignment on a level, smooth, paved surface, the movement of the towed or drawn vehicle or trailer does not deviate more than 3 inches to either side of the path of the towing vehicle that tows or draws it. The vehicle or trailer shall also be connected to the towing vehicle by suitable *safety chains or* ***devices***, 1 on each side of the coupling and at the extreme outer edge of the vehicle or trailer. Each *chain or* ***device*** and connection used shall be of sufficient strength to haul the vehicle or trailer when loaded. . . . . [MCL 257.721(3) (all emphasis added).]

According to the plain language of the statute that directly addresses the subject matter at hand – the manner in which vehicles and trailers may be attached to pickup trucks – the Legislature considers a ball hitch to be a "device."[23] This only makes sense because the noun "device" is defined as "a piece of equipment or a mechanism designed to serve a special purpose or perform a special function,"[24] "[a] contrivance or an invention serving a particular purpose,

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substances of which something is composed or can be made.'"); *Stone v Morrison & Powers*, 294 SW 641, 644 (Tex Civ App) ("The word "material" means "the substance of which anything is made." The pile driver was not a substance of which the concrete piles were made, but was an equipment to be used in the making."), *rev'd* on *other grds* 298 SW 538 (Tex Comm'n App 1927); *Terteling Bros v Glander*, 85 NE2d 379, 383 (1949) ("The word, 'materials,' is not defined by the statute. It is defined by Webster as 'the substance * * * of which anything is composed or may be made.'")

[23] Note too the Legislature's use of the noun "device" when identifying various other components that may not be placed on or about registration plates. MCL 257.721(4) ("A person shall not attach a name plate, insignia, or advertising *device* to a registration plate in a manner that obscures or partially obscures the registration information," MCL 257.721(5) ("A person shall not operate a motor vehicle that has a name plate, insignia, or advertising *device* attached to a registration plate in a manner that obscures or partially obscures the registration information.")

[24] *Merriam-Webster's Collegiate Dictionary* (11th Ed, 2005), p 342.

especially a machine used to perform one or more relatively simple tasks,"[25] and "a thing made for a particular purpose; an invention or contrivance, esp. a mechanical or electrical one."[26]

A ball hitch is indeed a piece of equipment or a mechanism designed to serve a special purpose or perform a special function (*i.e.*, hauling vehicles and trailers), a contrivance or an invention serving a particular purpose, especially a machine used to perform one or more relatively simple tasks (*i.e.*, hauling vehicles and trailers), and a thing made for a particular purpose (*i.e.*, hauling vehicles and trailers). "As the law-making branch of government, the Legislature is presumed to understand the meaning of the language it places into law . . . ." *Dedes v Asch*, 446 Mich 99, 120; 521 NW2d 488 (1994), *overruled on other grds by Robinson v City of Detroit*, 462 Mich 439; 613 NW2d 307 (2000). "Accordingly, the Court may not ignore, substitute or redefine language, . . . or assume that the Legislature inadvertently utilized one word or phrase instead of another." *Id.* Rather, "[t]he words of a statute are the most reliable indicator of the Legislature's intent . . . ." *Smith*, 496 Mich at 138.

According to the prosecution, the term "foreign materials" encompasses trailer hitches despite the fact that trailer hitches are not elements or substances of which something is composed or can be made. If the prosecution's analysis is correct, then it begs the question why the Legislature included subsections four and five which further provide that "[a] person shall not attach *a name plate, insignia, or advertising device* to a registration plate in a manner that obscures or partially obscures the registration information," MCL 257.225(4), nor "operate a motor vehicle that has *a name plate, insignia, or advertising device* attached to a registration plate in a manner that obscures or partially obscures the registration information." MCL 257.225(5). Certainly, if a ball hitch not immediately adjacent to or in contact with a registration

[25] *The American Heritage Dictionary of the English Language* (3rd Ed 1992).
[26] *Random House Webster's Unabridged Dictionary* (2nd Ed 2005).

plate constitutes "foreign material" *a fortiori* a name plate, insignia, or advertising device attached to and in contact with a registration plate constitutes such "foreign material." "In interpreting a statute, this Court avoids constructions that would render any part of the statute surplusage or nugatory." *People v Moreno*, 491 Mich 38, 45; 814 NW2d 624, 627 (2012). The prosecution's interpretation of MCL 257.225(2) cannot be correct because it renders MCL 257.225(4)-(5) mere surplusage insofar as name plates, insignia, and advertising devices would already constitute "foreign material" banned by MCL 257.225(2).[27]

Lastly, the prosecution's argument that any matter that obscures the visibility of any portion of a registration plate number violates MCL 257.225(2) is a highly unreasonable and unworkable interpretation and results in absurdity. "'Statutes must be construed to prevent absurd results" and should not be construed so that they "result in a highly unreasonable and unworkable, if not potentially absurd, interpretation." *People v Tennyson*, 487 Mich 730, 740, 741; 790 NW2d 354 (2010). According to the prosecution, if a dense fog appeared and obscured any portion of a registration plate number, the driver would be in violation of MCL 257.225(2). Similarly, if a dense snow began to fall and obscured even a single character of a registration plate number, the driver would again be in violation of this statute. Indeed, according to the prosecution's analysis, if a large dog or farm animal walking across the road stopped in front of a vehicle's registration plate so as to obscure any portion of the vehicle's registration plate number, police could properly cite the driver for violating MCL 257.225(2). Such an argument is a highly unreasonable and unworkable interpretation of MCL 257.225(2) and results in absurdity in its application. This is precisely why the Legislature in the first sentence of MCL 257.225(2) requires that registration plates be securely fastened in a horizontal position to the

[27] The prosecution is hard pressed to argue that a ball trailer hitch not immediately adjacent to or in contact with a registration plate somehow constitutes "foreign material" but a name plate, insignia, or advertising device attached to and in contact with a registration plate does not.

vehicle "at all times" so as to prevent the plate from swinging yet imposes no such requirement in the first sentence of MCL 257.225(2) regarding how a registration plate must be maintained. See, *People v Gaytan*, 992 NE2d 17, 24 (Ill App Ct), *app allowed* 996 NE2d 18 (Ill 2013).

D. Michigan Jurisprudence

The prosecution makes much ado about *People of Canton Twp v Wilmot*, unpublished opinion *per curiam* of the Court of Appeals, issued March 7, 2013 (Docket No. 305308); 2013 WL 951109 (attached as **Appendix B)**. However, *Wilmot* offers little guidance for or to this Court for several reasons. First, *Wilmot* is an unpublished decision, and unpublished decisions are "not precedentially binding under the rule of stare decisis." MCR 7.215(C)(1). See also, *Cedroni Assn, Inc v Tomblinson, Harburn Assoc, Architects & Planners Inc*, 492 Mich 40, 51; 821 NW2d 1 (2012).

Second, assuming *arguendo* that this Court wishes to rely upon a sole outlier unpublished Court of Appeals as the basis for interpreting whether the deputies here violated the Fourth Amendment, the portion of *Wilmot* upon which the prosecution relies is *obiter dictum*, a fact which even the *Wilmot* panel candidly acknowledged. "Obiter dicta are not binding precedent." *People v Peltola*, 489 Mich 174, 190 n32; 803 NW2d 140 (2011). "Instead, they are statements that are unnecessary to determine the case at hand and, thus, 'lack the force of an adjudication.'" *Id*. (citation omitted).

The *Wilmot* panel repeatedly emphasized that it was neither addressing nor resolving the question whether the language of MCL 257.225(2) "applies only to problems related to the plate itself, *i.e*., foreign materials located directly on the plate or numerals and letters that are in a condition that render them illegible, or . . . the language can apply to objects or obstacles located separate and apart from the plate itself that obscure or partially obscure the plate, such as the

hitch ball." *Wilmot*, 2013 WL 951109, at *3. The *Wilmot* panel "ultimately f[ou]nd it unnecessary to resolve the dispute regarding the proper construction of § 225(2)." *Id*. See also, *Wilmot*, 2013 WL 951109, at *5 ("Here, we tend to believe, *without ruling so*, that MCL 257.225(2) was implicated, where the subsection demands, in part, that a license plate be placed and positioned in a manner that makes it clearly visible.") (Emphasis added.) Rather, the *Wilmot* panel resolved the issue before it on the bases that the district court's factual findings were "problematic" because that court "was simply not prepared to find, because it would be 'dangerous to believe so,' that the average-sized hitch ball obstructed the plate." *Id*. at *4 n3. "Public policy concerns seemingly crept into the district court's analysis, instead of confining the analysis to a straightforward and proper examination of the facts." *Id*. Thus, the *Wilmot* panel construed the district court's ruling "as one that reflected worry about the impact of finding an obstruction upon other situations where a plate is obscured by hitches, bike racks, or other similar items" which "is a legislative concern and not one that should have invaded the factfinding process." *Id*. Additionally, the *Wilmot* panel made its actual holding expressly clear:

> *Regardless of whether MCL 257.225(2) was implicated under the circumstances presented* or whether the district court's factual findings were clearly erroneous with respect to whether the officer had probable cause or reasonable suspicion to conclude that a civil infraction occurred, *we hold that there is no basis to invoke the exclusionary rule, as there is no evidence of misconduct by the officer*. [*Wilmot*, 2013 WL 951109, at *5 (all emphasis assed).]

The prosecution somehow claims to this Court, with a straight face, that "the majority opinion in Wilmot has persuasive value." See, Plaintiff-Appellant's Application for Leave to Appeal, p 12. Even more interestingly, the prosecution on one hand acknowledges that the Court of Appeals in this case "did not have to follow Wilmot because it was unpublished" while on the other hand lamenting that the Court of Appeals' "discussion should have merited comment" on the *Wilmot* decision. *Id*. However, judicial precedent reaches its nadir and is at its weakest point

when based upon *obiter dictum* from an unpublished Court of Appeals opinion in which even the three Court of Appeals judges themselves could not agree on a hypothetical issue that was not before the court and which the court expressly did not address. The 2-judge *Wilmot* majority did not cite a single dictionary in its analysis despite the fact that the words of a statute and their ordinary dictionary meanings are the starting point for a proper statutory analysis.[28] The *Wilmot* decision is representative of judicial precedent at its weakest, the Court of Appeals was not required to address every case (much less nonbinding dicta in an a nonbinding unpublished opinion), and quite frankly, reverence for the solemnity of the Constitution requires that this Court look to something greater than the *Wilmot* opinion when passing upon a question that ultimately is of constitutional magnitude.

E. Jurisprudence from Other Jurisdictions

The prosecution relies upon several decisions from other jurisdictions in support of its argument. However, these decisions are distinguishable either due to material differences in the statutory language involved or those courts' failures to address the statutory construction arguments set forth above.

For example, in *People v White*, 93 Cal App 4th 1022; 113 Cal Rptr 2d 584; (2001), the California Court of Appeals upheld a similar stop of a truck with a tow ball on the truck's rear bumper that blocked the deputy's view of the middle numeral of the rear license plate. *White*, 93 Cal App 4th at 1024. The deputy "testified that he believed the tow ball's position violated Vehicle Code section 5201, which requires that license plates be clearly visible." *Id*. The trial court suppressed the evidence found during the stop, the Superior Court appellate division

[28] Interestingly, the dissenting Judge on the *Wilmot* panel, Judge Gleicher, was the only judge who actually undertook an analysis of the plain language of MCL 257.721(2), including an analysis of the ordinary dictionary definitions of the language contained in the statute, and not surprisingly, when such an analysis was conducted, Judge Gleicher concluded that, based upon the plain language of the statute, the Legislature did not intend for the statute to be applied to the trailer hitch that was present in that case.

reversed the trial court's order granting defendant's motion to suppress, and the California Court of Appeals agreed and adopted the Superior Court appellate division's reasoning. *Id*. at 1024-25.

The California Court of Appeals held that "[i]n using the phrase 'clearly visible' in Vehicle Code section 5201, it is apparent that the Legislature meant a license plate must not be obstructed in any manner and must be entirely readable." *Id*. at 1026. Consequently, that court held that "[a] license plate mounted in a place that results in it being partially obstructed from view by a trailer hitch ball violates Vehicle Code section 5201 and, thus, provides a law enforcement officer with a lawful basis upon which to detain the vehicle and hence its driver." *Id*.

However, the language employed by the California Legislature in the traffic law at issue in *White* is substantially different from the language employed by the Michigan Legislature in the traffic law at issue here. To be sure, the California statute at issue, Vehicle Code section 5201, provided in pertinent part: "'License plates shall at all times be . . . mounted in a position to be clearly visible, and shall be maintained in a condition so as to be clearly legible.'" *Id*. at 1025. In contrast, the Michigan statute at issue here, MCL 257.225(2), provides in pertinent part: "The plate shall be attached at a height of not less than 12 inches from the ground, measured from the bottom of the plate, *in a place and position which is clearly visible.*"[29] MCL 257.225(2) (all emphasis added). As noted above, the Last Antecedent Rule requires that the modifying or restrictive words or clause "which is clearly visible" is confined solely to the immediately preceding clause or last antecedent, *i.e*., the compound noun "place and position." Thus, it is the "place and position" where the license plate is attached to a vehicle that must be

[29] The Subsection at issue, Subsection two, consists of three sentences. The first sentence addresses how registration plates must be securely fastened to vehicles and is not at issue in this matter.

"clearly visible" and not necessarily the registration plate itself, the manner in which the registration plate must be maintained being addressed in the following sentence.

Conspicuously absent from the *White* court's analysis is any mention of the grammatical structure of the California statute vis-a-vis the Last Antecedent Rule.[30] "Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." *Webster v Fall*, 266 US 507, 511; 45 S Ct 148; 69 L Ed 411 (1925) ("The most that can be said is that the point was in the cases [cited] if any one had seen fit to raise it."). See also, *Mullins v St Joseph Mercy Hosp*, 271 Mich App 503, 543 n2; 722 NW2d 666 (2006), *revs'd on other grds* 480 Mich 948 (2007). Accordingly, the California *White* decision does little to advance the prosecution's cause in this case.

The prosecution further relies upon *Parks v State*, 247 P3d 857 (Wy 2011), where the Wyoming Supreme Court upheld a stop effectuated because a trailer hitch ball partially obstructed the registration plate number. *Id*. at 858. The Wyoming statute at issue there provided in pertinent part:

> (a) License plates for vehicles shall be:
>
> (i) Conspicuously displayed and securely fastened to be ***plainly visible:***
> . . .
> (ii) Secured to prevent swinging;
>
> (iii) Attached in a horizontal position no less than twelve (12) inches from the ground;
>
> (iv) Maintained free from foreign materials and in a condition to be ***clearly legible.*** [*Parks*, 247 P3d at 858-59 (all emphasis added by *Parks* court).]

[30] Like Michigan, California appellate court's employ the Last Antecedent Rule when construing California statutes. See, *e.g.*, *Old Republic Constr Program Group v Boccardo Law Firm, Inc*, 230 Cal App 4th 859, 872; 179 Cal Rptr 3d 129 (2014).

The *Parks* court, painting with a broad brush like the prosecution de sin this case, held that "[t]he requirements that a license plate be 'plainly visible' and 'clearly legible' indicate that a license plate must not be obstructed in any manner." *Parks*, 247 P3d at 860. Although the language contained in the Wyoming statute at issue in *Parks* is closer to the language contained din the statute at issue here, the Parks court did failed to analysis crucial language in the statute such as the requirement be "maintained" "free from" "foreign materials." Without belaboring the issue, for all of the reasons already set forth above, when a more precise analysis is employed and the ordinary dictionary definitions of these words are taken into consideration, a different result obtains than that which obtained in Parks where the court merely focused on the terms "plainly visible" and "clearly legible" and effectively ignored the remainder of the statutory language, grammar, and structure. Again, these "[q]uestions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents" and "[t]he most that can be said is that the point was in the cases [cited] if any one had seen fit to raise it." *Webster*, 266 US at 511. See also, *Mullins*, 271 Mich App at 543 n2. Accordingly, the Wyoming *Parks* decision is of little utility in this instance.[31]

Significantly, courts that have employed a more thorough statutory analysis of similar statutes have concluded that investigatory stops of motor vehicles on the basis that a trailer hitch partially obstructs registration plate information violate the Fourth Amendment. For example, in *People v Gaytan*, 992 NE2d 17 (App Ct) *app allowed* 996 NE2d 18 (Ill 2013), a trial court denied the defendant's motion to suppress evidence in which the defendant argued that police

[31] The remaining decisions cited by the prosecution in support of its argument – namely *United States v Ratcliff*, unpublished opinion of the United States District Court for the Eastern District of Tennessee, issued September 25, 2006 (No. 1 :06-cr-55); 2006 WL 2771014 and *United States* v *Unrau*, unpublished opinion of the United States District Court for Kansas, issued June 16, 2003 (No. 03-40009-01-SAC); 2003 WL 21667166 – suffer from the same analytical deficiency.

officers did not have articulable suspicion that a crime had been committed or was being committed when they stopped defendant because his registration plate was obstructed by a trailer ball hitch. *Id*. at 18. On appeal, the defendant argued that the trial court had improperly denied the motion to suppress evidence because the Illinois Vehicle only prohibited materials physically attached to the registration plate itself and did not prohibit obstructions, such as a trailer hitch, not attached to the registration plate. *Id*.

The Appellate Court of Illinois agreed and reversed the defendant's conviction. The Illinois statute at issue was virtually identical to the statute at issue in this case, but rather than paint with a broad, emotion-laden brush, the Appellate Court of Illinois embarked upon a similar statutory analysis as that set forth above and, not surprisingly, concluded that the stop was unlawful.

> Before using rules of statutory construction, we look to the plain language of the statute. Section 3–413(b) of the Vehicle Code provides the "registration plate shall at all times be * * * free from any materials that would obstruct the visibility of the plate, including, but not limited to, glass covers and plastic covers." 625 ILCS 5/3–413(b) (West 2010). The Vehicle Code does not define the word "material" and " obstruct." "Material" is defined as "of, relating to, or consisting of matter." Webster's Third New International Dictionary 1392 (1976). See also *People ex rel. State Board of Health v Jones,* 92 Ill.App. 447, 449 (1900) (defining "material" as "[r]elating to, or consisting of matter; corporeal; not spiritual; physical" (internal quotation marks omitted)). " Matter" is defined as "the substance of which a physical object is composed." Webster's Third New International Dictionary 1394 (1976). The relevant definition of "obstruct" is "to cut off from sight." Merriam–Webster's Collegiate Dictionary 801 (10th ed.2000).
>
> Obviously, a trailer hitch is a physical object capable of obstructing a viewer's visibility. Read in isolation, the phrase "any materials that would obstruct the visibility of the plate" appears to support the State's interpretation any physical object obstructing the visibility of the plate is a violation of section 3–413(b). However, the subject matter of this statute is registration plates and not vehicle accessories or attachments. The statute pertains to the requirements on a registration plate and that the "registration plate must at all times be * * * free from" obstructing materials. An alternative definition of "free" is "clear." Merriam–Webster's Collegiate Dictionary 463 (10th ed.2000). "From" is defined

> as "a function word to indicate a starting point of a physical movement or a starting point in measuring or reckoning or in a statement of limits" and is "used as a function word to indicate physical separation or an act or condition of removal, abstention, exclusion, release, subtraction, or differentiation." Merriam–Webster's Collegiate Dictionary 467–68 (10th ed.2000). *Read in totality and applying the definition of "from" to the statute, a plain reading supports defendant's interpretation the registration plate must be physically separated from any material obstructing visibility of the plate. In other words, section 3–413(b) prohibits objects obstructing the registration plate's visibility that are connected or attached to the plate itself.* [*Gaytan*, 992 NE2d at 23-24 (emphasis added).]

The prosecution's argument in *Gaytan*, like the prosecution's argument here, focused primarily upon the "clearly visible" and "clearly legible" language contained in the clause addressing the plate's visibility, legibility, "place and position," and "condition." *Gaytan*, 992 NE2d at 23. The Appellate Court of Illinois rejected the prosecution's analysis, just as this Court should, noting the absurd results that would obtain:

> This interpretation appears to reword the statute by applying requirements from other clauses of the statute to the relevant clause for the conclusion any object partially obstructing a police officer's visibility of the plate causes the plate to not be "clearly visible" and is a violation of section 3–413(b). *This appears unworkable as, taken to its logical conclusion, it would prohibit any object such as a traffic sign, post, tree, or even another vehicle from obstructing a police officer's "clear visibility" of the plate.* See *People v Isaacson*, 409 Ill.App.3d 1079, 1082, 351 Ill.Dec. 355, 950 N.E.2d 1183, 1187 (2011) ("[W]e presume the legislature did not intend absurdity, inconvenience, or injustice."). *The second sentence of section 3–413(b) requires annual registration stickers attached to the registration plate must be "clearly visible at all times." This "at all times" language is noticeably absent from the first sentence of section 3–413(b), and its absence implies the legislature does not require the visibility of a registration plate to be unobstructed "at all times" from all angles.* See *People v Edwards*, 2012 IL 111711, ¶ 27, 360 Ill.Dec. 784, 969 N.E.2d 829 ("Where language is included in one section of a statute but omitted in another section of the same statute, we presume the legislature acted intentionally and purposely in the inclusion or exclusion."). [*Gaytan*, 992 NE2d at 24-25 (emphasis added).]

Again, in *Harris v State*, 11 So 3d 462 (Dist Ct App 2009), the District Court of Appeal of Florida held that a stop similar to the one in this case violated the Fourth Amendment. Upon

holding that the phrase "other obscuring matter" in the Florida statute at issue there "applies to obstructions 'on' the tag such as grease, grime or rags," the *Harris* court noted the absence of a more particular legislative mandate:

> Matters external to the tag, such as trailer hitches, bicycle racks, handicap chairs, u-hauls, and the like are not covered by the statute. If the legislature chooses to bring such items external to the license plate within the statute, simple and concise language can accomplish the task. [*Harris*, 11 So 3d at 463-64.]

F. Analysis

Here, the deputies repeatedly testified that they seized Mr. Dunbar because his truck bore an "obstructed plate." MHT, pp 9, 16, 17. Significantly absent from either deputy's testimony is any mention of the statutory requirement that any such obstruction must be created by a "foreign material" and that only registration plates must remain "free from" such materials. Law enforcement officers cannot manufacture reasonable suspicion by a employing a half-baked analysis of only two words – "obstructed plate" – in a subsection of a statute that contains no less than 87 words. Common sense dictates that the deputies either knew *or reasonably should have known* that a ball trailer hitch did not constitute "foreign material" of which a registration plate must be kept free. In short, the license plate affixed to Mr. Dunbar's vehicle did not violate MCL 257.225(2) merely because it was partially obstructed by a towing ball from the deputies' vantage point, so the deputies were permitted to conduct a traffic stop of Mr. Dunbar's vehicle consistent with the Fourth Amendment.

II. THE COURT OF APPEALS' OPINION SHOULD BE AFFIRMED WHERE APPELLANT FORFEITED THE REMAINING ISSUES PRESENTED TO THIS COURT BY FAILING TO RAISE THEM IN THE TRIAL COURT OR IN THE COURT OF APPEALS.

The remaining arguments in Plaintiff-Appellant's Application for Leave to Appeal were presented to neither the trial court nor the Court of Appeals.[32] Consequently, these arguments should not be addressed by this Court.

"Michigan generally follows the 'raise or waive' rule of appellate review." *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008). Thus, "a litigant must preserve an issue for appellate review by raising it in the trial court." *Id*. at 387.

> By limiting appellate review to those issues raised and argued in the trial court, and holding all other issues waived, appellate courts require litigants to raise and frame their arguments at a time when their opponents may respond to them factually. This practice also avoids the untenable result of permitting an unsuccessful litigant to prevail by avoiding its tactical decisions that proved unsuccessful. *Generally, a party may not remain silent in the trial court, only to prevail on an issue that was not called to the trial court's attention. Trial courts are not the research assistants of the litigants; the parties have a duty to fully present their legal arguments to the court for its resolution of their dispute.* [*Walters*, 481 Mich at 388 (emphasis added).]

"In order to properly preserve an issue for appeal, a defendant must 'raise objections *at a time when the trial court has an opportunity to correct the error . . . .*'" *People v Pipes*, 475 Mich 267, 277; 715 NW2d 290 (2006) (footnote omitted; emphasis added). See also, *Moffit v Sederlund*, 145 Mich App 1, 7; 378 NW2d 491 (1985). "[A]n issue is not properly preserved if it is not raised before, addressed by, or decided by the lower court . . . ." *Gen Motors Corp v Dep't of Treasury*, 290 Mich App 355, 386; 803 NW2d 698 (2010), *lv den* 489 Mich 991 (2011), *cert*

[32] Additionally, this Court's Order dated March 5, 2015, directed the parties to file supplemental briefs addressing the single question "whether the license plate affixed to the defendant's vehicle violated MCL 257.225(2) where it was obstructed by a towing ball, thereby permitting law enforcement officers to conduct a traffic stop of the defendant's vehicle." *Id*.

den 132 S Ct 1143 (2012). "[A] 'failure to timely raise an issue waives review of that issue on appeal.'"[33] *Walters*, 481 Mich at 387.

In order to properly preserve an issue for review by this Court, the issue must be raised in *both* the trial court as well as the Court of Appeals. See, *e.g*., *Sholberg v Truman*, 496 Mich 1, 7 n6; 852 NW2d 89 (2014) (trial court) ; *Lawrence v Will Darrah & Assoc, Inc*, 445 Mich 1, 5; 516 NW2d 43 (1994) (Court of Appeals); *Placek v City of Sterling Hts*, 405 Mich 638, 653-54 n6; 275 NW2d 511 (1979) (holding that issue was properly preserved for appellate review where plaintiff raised issue by objecting in the trial court, raised the same issue on appeal to the Court of Appeals, and then raised the same issue before the Michigan Supreme Court)

Appellant forfeited the present issues when it failed to present them to the trial court and to the Court of Appeals and thereby provide Mr. Dunbar an opportunity to respond to them factually – a disadvantage that the preservation rule seeks avoid. *Walters*, 481 Mich at 388. Likewise, by failing to raise and argue these issues in either lower court, the prosecution seeks to avoid its own tactical decisions that proved unsuccessful in the lower court. *Id*. The prosecution may not remain silent in the trial court and then seek to prevail in this Court on issue that were not called to the attention of either lower court. *Id*. As this Court so eloquently noted in *Walters*: "Trial courts are not the research assistants of the litigants; the parties have a duty to fully present their legal arguments to the court for its resolution of their dispute." *Walters*, 481 Mich at 388. Accordingly, this Court should decline to entertain the merits of the issues that Appellant now seeks to present to the Court and dismiss this appeal in its entirety.

[33] This rules applies equally to issues of constitutionally magnitude. See, *e.g*., *Butcher v Dept of Treasury, Revenue Div*, 425 Mich 262, 276; 389 NW2d 412 (1986) ("Plaintiffs' due process and equal protection arguments were not raised in the Court of Appeals, and we therefore decline to consider them."); *Dagenhardt v Special Mach & Engg, Inc*, 418 Mich 520, 527; 345 NW2d 164 (1984) ("However, we note that plaintiff's constitutional claims are not properly before this Court because they were not presented to the trial court.")

III. THE DEPUTIES' CONDUCT DOES NOT CONSTITUTE AN OBJECTIVELY REASONABLE MISTAKE OF FACT WHERE THEY MANUFACTURED REASONABLE SUSPICION WHEN THEY KNEW THAT THE VEHICLE REGISTRATION NUMBER WAS ONLY ONE OF TWO POSSIBLE ALPHANUMERIC SEQUENCES AND THEY CONDUCTED A COMPUTER QUERY FOR ONLY ONE OF THE TWO SEQUENCES BEFORE EFFECTUATING THEIR SEIZURE.

The prosecution offers a 2-sentence, 78-word blitzkrieg argument that the Mr. Dunbar's truck "was stopped because the license plate as read by the officers came back on the Law Enforcement Information Network (LEIN) for a 2007 Chevrolet Equinox rather than for an older 1990s model Ford Ranger pickup truck," so therefore, the Court of Appeals failed to consider that a traffic stop based upon the deputies' "incorrect but reasonable assessment of the facts." See, Plaintiff-Appellant's Application for Leave to Appeal, pp 22-23. There are two problems with the prosecution's argument.

First, the argument that the deputies made an "incorrect but reasonable assessment of the facts" is not borne out by the lower court record. Deputy Van Andal made it unmistakably clear that he made no mistakes when he queried the LEIN database and that he typed in the registration that he meant to type in. MHT, p 25.

During cross-examination by defense counsel, Deputy Van Andel testified:

> Q. [Defense Counsel] That's good to know. *Can you tell me why you didn't rerun the license plate with the 6 instead of the 5*?
>
> A. [Deputy Van Andel] *It was just I guess fast*. We figured either, I guess I said it was, the plate showed up to a, I remember telling Deputy Ottinger that it, that the plate came back to a 2007 Equinox and he said, okay, we'll stop it then and it had just, either, *I guess it was one of those things where it's either wrong or we couldn't read it because it was obstructed.* [MHT, pp 28-29 (all emphasis added).]

Under continued defense cross-examination as to why the deputies did not query the LEIN database for the correct registration number, *i.e.*, CHS 6818, after querying it for the incorrect CHS 5818 registration number, Deputy Van Andel testified:

> Q. [Defense Counsel] Exactly. So I guess more so my question is there was no extenuating circumstances or anything that would have prevented you from taking another couple of seconds and rerunning his plate with the 6, correct?
>
> A. [Deputy Van Andel] *We couldn't see it, I guess*.
>
> Q. And I understand that but what I just wanted to make clear is, it's not a situation in which it appeared defendant was going to flee or he could have easily eluded the police, the deputies in a short amount of time, correct?
>
> A. ***This is, well, I guess just to answer the question, I don't know***. [MHT, p 29 (emphasis added).]

Notwithstanding Deputy Van Andal's unequivocal testimony, during oral argument at the motion hearing, the prosecution argued that Deputy Van Andal had mistakenly entered the "incorrect" registration plate number, and the trial court swiftly corrected this mischaracterization of the record evidence:

> [MR. ROBERTS (the Prosecution):] But what we do know for a fact is that Deputy Van Andel entered the incorrect plate number. As it turns out, the incorrect plate number into the LEIN system.
>
> THE COURT: *He correctly entered what he intended to enter?*
>
> MR. ROBERTS: *Right*.
>
> THE COURT; The number that resulted was not connected to Mr. Dunbar's vehicle. [MHT, pp 37-38 (emphasis added).]

The prosecution nonetheless continued in its argument, claiming that Deputy Van Andal "didn't have, in the deputy's mind, he didn't have, he wasn't 100 percent certain that they inputted the correct information." MHT, p 39. The lower court again sought to disabuse the prosecution this claim:

> [MR. ROBERTS (the Prosecution):] "He guessed incorrectly as it turned out but don't think it was an unreasonable guess to make because he thought it had to be either a 5 or a 6.
>
> THE COURT: Well, if I look at People's 1, clearly it's either a 5 or 6 and the ball obscures the entire lower half of the digit. [MHT, p 39.]

During the defense's closing argument, counsel emphasized the fact that the deputies perforce had to have known that the correct registration plate number CHS 6818 once they excluded the incorrect CHS 5818 registration number from their binary choice.

> *He knew that number was either a 5 or a 6. He could have just as easily taken the time to run it with a 6 and that would have solved the issue at hand*. I mean his plate was not obstructed. It's not reasonable for an officer to pull over every vehicle that has a ball on its bumper. And as we heard testimony that it's common for trucks to have balls on their bumper. [MHT, p 48 (emphasis added).]
>
> * * * *
>
> THE COURT: Well here's, I'm Deputy Jason Van Andel and I've run it in the computer and it says the license plate that I think we're following is an '07 Equinox in Lansing and that's not what's in front of me. So don't I have a duty if I'm the deputy to say, we better check this out?
>
> MR. OAKES: *What you have a duty to do is to put forth reasonable effort if you know that, that number could either be a 5 or a 6. I knew that when I punched it in the first time, let me try the 6*. Hey, we're not going anywhere. It's 1 a.m. There's no any other traffic out. [MHT, p 54 (emphasis added).]

Law enforcement officers' objectively reasonable reliance on incorrect facts does not *ipso facto* render their search or seizure based on those face unlawful. This occurs where, by way of illustration, law enforcement officers objectively reasonably rely upon a data entry mistake of a court employee which causes incorrect computer records,[34] objectively reasonably rely upon the constitutionality of a statute later determined to be unconstitutional,[35] conduct a search in objectively reasonable reliance on a facially valid warrant that is later held invalid,[36] objectively reasonably rely on an invalid warrant due to a judge forgetting to make "clerical

[34] *Arizona v Evans*, 514 US 1, 15; 115 S Ct 1185; 131 L Ed 2d 34 (1995).
[35] *Illinois v Krull*, 480 US 340, 350; 107 S Ct 1160; 94 L Ed 2d 364 (1987).
[36] *United States v Leon*, 468 US 897, 914; 104 S Ct 3405; 82 L Ed 2d 677 (1984).

corrections" which is later held invalid,[37] reasonably conclude that an individual has an outstanding arrest warrant based upon an erroneous warrant record in a government database made by another police employee when no such warrant is outstanding,[38] reasonably believe that an apartment they search is within the scope of a warrant based on objective facts indicating no distinction between the apartment that was unlawfully searched and the area lawfully within the scope of the warrant,[39] who believe that their warrantless entry into a home is valid based upon the consent given to them by a third party who they reasonably believe to possess common authority over the premises but who in fact does not possess such authority,[40] or who have probable cause to arrest one party and reasonably mistake a second party for the first party.[41]

The present case is readily distinguishable from the cases where law enforcement officers' objectively reasonable reliance removed culpability from them for the resulting unlawful search or seizure. Everyone in the lower court agreed that the deputies were faced with a binary choice, namely they could query the LEIN database for CHS 5818 (the incorrect registration number) and query the LEIN database for CHS 6818 (the correct registration plate number). Likewise, everyone in the lower court agreed that once the deputies queried the LEIN database for the incorrect registration number CHS 5818 they could have just as easily re-queried the LEIN database for the correct registration plate number CHS 6818 and within seconds received a response. When Deputy Van Andel, the deputy operating the computer in the deputies' patrol vehicle, was cornered under defense cross-examination as to why the deputies did not simply re-query the LEIN database for the correct registration number, Deputy Van

[37] *Massachusetts v Sheppard*, 468 US 981, 990; 104 S Ct 3424; 82 L Ed 2d 737 (1984).
[38] *Herring v United States*, 555 US 135, 136-37; 129 S Ct 695; 172 L Ed 2d 496 (2009).
[39] *Maryland v Garrison*, 480 US 79, 88-89; 107 S Ct 1013; 94 L Ed 2d 72 (1987).
[40] *Illinois v Rodriguez*, 497 US 177, 186-89; 110 S Ct 279; 111 L Ed 2d 148 (1990).
[41] *Hill v California*, 401 US 797, 802; 91 S Ct 1106; 28 L Ed 2d 484 (1971).

Andel eventually acceded: "This is, well, I guess just to answer the question, I don't know." MHT, p 29.

It is axiomatic that law enforcement officers may not create reasonable suspicion and then seek to use it to justify a search or seizure,[42] yet this is precisely what the deputies did in this case. Faced with the prospect of re-querying the LEIN database with their second binary choice, the deputies knew that querying the correct registration plate number CHS 6818 would resolve their concerns and simply lost sight of reasonableness as they continued to "engage[d] in the often competitive enterprise of ferreting out crime." *Johnson v United States*, 333 US 10, 14; 68 S Ct 367; 92 L Ed 436 (1948) (footnote omitted).

This case is a far cry from the United States Supreme Court precedent upholding searches and seizures where law enforcement officers objectively reasonably relied upon mistaken facts due to the mistakes of others such as a court employees,[43] the state legislature,[44] magistrate,[45] judge,[46] and police employee[47] In those cases where the United States Supreme Court upheld searches and seizures based upon law enforcement officers' objectively reasonable reliance upon mistaken facts the officers had no way of ascertaining the correct facts.[48]

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[42] See, *e.g.*, *Wong Sun v United States*, 371 US 471, 485; 83 S Ct 407; 9 L Ed 2d 441 (1963) ("A contrary holding here would mean that a vague suspicion could be transformed into probable cause for arrest by reason of ambiguous conduct which the arresting officers themselves have provoked"); *Hinchman v Moore*, 312 F 3d 198, 205-06 (CA 6, 2002) ("Falsifying facts to establish probable cause to arrest and prosecute an innocent person is of course patently unconstitutional"); *United States v Yousif*, 308 F.3d 820, 829 (CA 8, 2002) ("Reasonable suspicion cannot be manufactured by the police themselves"); *United States v Escalante*, 239 F.3d 678, 682 (CA 5, 2001) ("I cannot agree that though armed with a salutary purpose, an officer can manufacture probable cause by tailgating a motorist") (Stewart, J, dissenting); *United States v Hyppolite*, 65 F3d 1151, 1157 (CA 4, 1995) ("Indeed, the Fourth Amendment would mean little if officers could manufacture probable cause . . . ."); *United States v Alvarez*, 694 F Supp 734, 738 fn 10 (CD Cal, 1988) ("The government may not manufacture its own "reasonable suspicion" in order to justify an otherwise illegal search"), *revs'd on other grds* 899 F.2d 833 (CA 9, 1990).

[43] *Evans*, 514 US at 15.

[44] *Krull*, 480 US at 350.

[45] *Leon*, 468 US at 914.

[46] *Sheppard*, 468 US at 990.

[47] *Herring*, 555 US at 136-37.

[48] See, *Garrison*, 480 US at 88-89 (no way of ascertaining that apartment within scope of warrant where objective facts offered no distinction between apartment that was unlawfully searched and area lawfully within the scope of the warrant); *Rodriguez*, 497 US at 186-89 (no way of ascertaining that third party who police reasonably believed

As soon as the deputies received a response to their LEIN query within seconds, they knew that the correct registration plate number was CHS 6818, not the incorrect registration number they had queried CHS 5818, yet the deputies continued their investigation knowing that it was based on inaccurate information (i.e., that CHS 5818 was the incorrect registration number). When defense counsel asked Deputy Van Andal why the deputies continued their investigation knowing it was based on inaccurate information, all Deputy Van Andal could articulate at the end of the day was, "I don't know." MHT, p 29 (emphasis added). Accordingly, no mistake of fact occurred in this case on which the deputies could objectively reasonably rely, so even if this issue was property preserved – which it is not – the deputies conduct would still be unreasonable under the Fourth Amendment.

possessed common authority over premises lacked such authority); *Hill*, 401 US at 802 (no way of ascertaining identify of person who police reasonably believed was someone else with an outstanding arrest warrant).

IV. THE DEPUTIES' CONDUCT DOES NOT CONSTITUTE AN OBJECTIVELY REASONABLE MISTAKE OF LAW WHERE THEY EFFECTUATED A SEIZURE ON THE BASIS THAT A BALL AND SOCKET TRAILER HITCH POSITIONED SO THAT IT REQUIRED THEM TO REPOSITION THEMSELVES IN ORDER TO VIEW A SINGLE DIGIT ON THE VEHICLE REGISTRATION PLATE CONSTITUTED "FOREIGN MATERIALS" THAT PARTIALLY OBSCURE THE REGISTRATION INFORMATION CONTRARY TO MCL 257.225(2), AND IF THE DEPUTIES' MISTAKE OF LAW WAS OBJECTIVELY REASONABLE, THEN MCL 257.225(2) IS UNENFORCEABLE DUE TO IT BEING VOID FOR VAGUENESS.

A. Objectively Reasonable Mistake of Law

The prosecution further presents to this Court the unpreserved argument that the deputies here made a objectively reasonable mistake of law, so this Court should wink and nod and extend its imprimatur on the deputies' conduct. The basis for the prosecution's argument is *Heien v North Carolina*, __ US __; 135 S Ct 530; 190 L Ed 2d 475 (2014), where the Supreme Court held that an objectively reasonable mistake of law can give rise to the reasonable suspicion necessary to uphold a seizure under the Fourth Amendment. *Id*. at 534, 539. Notably, however, the Court emphasized that "[t]he Fourth Amendment tolerates only *reasonable* mistakes, and those mistakes . . . must be *objectively* reasonable," so its holding "does not discourage officers from learning the law." *Id*. at 539-40.

Two justices concurred in *Heien* to emphasize that Fourth Amendment tolerates only objectively reasonable mistakes of law.[49] *Id*. at 540 (Kagan, J., concurring). Thus, "an officer's 'subjective understanding' is irrelevant . . . ." *Id*. at 541. "That means the government cannot defend an officer's mistaken legal interpretation on the ground that the officer was unaware of or untrained in the law." *Id*. "And it means that . . . an officer's reliance on 'an incorrect memo or training program from the police department' makes no difference to the analysis" because such

[49] Justice Kagan's full concurrence agreed with the basis for the *Heien* majority's decision and thus constitutes binding precedent. See, *e.g*., *People v Anderson*, 389 Mich 155, 170; 205 NW2d 461 (1973), *overruled on other grds by People v Hickman*, 470 Mich 602; 684 NW2d 267 (2004).

reliance "pertain[s] to the officer's subjective understanding of the law and thus cannot help to justify a seizure." *Id*. (citation omitted). "[T]he test is satisfied when the law at issue is 'so doubtful in construction' that a reasonable judge could agree with the officer's view." *Id*.

"A court tasked with deciding whether an officer's mistake of law can support a seizure thus faces a straightforward question of statutory construction." *Heien*, 135 S Ct at 542 (Kagan, J., concurring). "If the statute is genuinely ambiguous, such that overturning the officer's judgment requires hard interpretive work, then the officer has made a reasonable mistake." *Id*. ("The critical point is that the statute poses a quite difficult question of interpretation . . . .") "[T]he statute must pose a 'really difficult' or 'very hard question of statutory interpretation.'" *Id.* "[S]uch cases will be 'exceedingly rare.'" *Id*.

For all of the reasons set forth more fully in Argument I, *ante*, a straightforward analysis of statutory construction does not reveal that MCL 257.225(2) is genuinely ambiguous such that overturning the deputies' judgment requires hard interpretive work. The deputies testified in the trial court that the registration plate on Mr. Dunbar's truck was clearly visible and properly illuminated, but a single numeral in the registration plate number was partial obscured from their particular vantage point. MHT, pp 8-9, 18, 23, 34. There is nothing in the deputies' testimony that the *positioning* of the registration plate on Mr. Dunbar's motor vehicle was somehow inappropriate or that it otherwise entered into their calculus when deciding whether to conduct their investigatory stop.

The plain language of the second sentence in MCL 257.225(2) provides that a registration plate must be "in a place and position which is clearly visible." *Id*. The modifying or restrictive words "which is clearly visible" relate to the last antecedent, *i.e*., "place and position," so a reasonable law enforcement officer would not have believed that it was objectively reasonable to

conclude that a ball trailer hitch partially obstructing a single digit on a registration plate somehow violated this aspect of the statute because it is undisputed that the place and position where the registration place was attached to Mr. Dunbar's vehicle was clearly visible.

Likewise, a reasonable law enforcement officer would not have believed that it was objectively reasonable to conclude that a ball trailer hitch partially obstructing a single digit on a registration plate violated the language contained in subsection two providing that "[t]he plate shall be maintained free from foreign materials that obscure or partially obscure the registration information, and in a clearly legible condition." MCL 257.225(2) (all emphasis added). Common sense provides that trailer ball hitches are not "materials" that are "foreign" to a back bumper and from which a registration plate must remain free.

B. Void for Vagueness[50]

Even if *arguendo* an objectively reasonable law enforcement officer would have made the same mistakes of law as the deputies did in this case, the present charges would still have to be dismissed because such a ruling would render MCL 257.225(2) void for vagueness. "A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *FCC v Fox Television Stations, Inc*,__ US __; 132 S Ct 2307, 2317; 183 L Ed 2d 234 (2012). "This requirement of clarity in regulation is essential to the protections provided by the Due Process Clause of the Fifth Amendment" and "requires the invalidation of laws that are impermissibly vague." *Id*. ""A conviction or punishment fails to comply with due process if the statute or regulation under which it is obtained fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is

[50] This argument was not address in *Heien*, and it appears to be an issue of first impression throughout the country. Only case exists in Westlaw's all state and all federal case law database in which the name and/or citation of *Heien* is used in the same opinion with the terms "void" and "vague" near one another. See, *State v Hurley*, 2015 VT 46; __ NE2d __ (2015).

so standardless that it authorizes or encourages seriously discriminatory enforcement.'" *Id.* "[T]he void for vagueness doctrine addresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way." *Id.*

The prosecution's argument is replete with irony insofar as it maintains that MCL 257.225(2) is so vague that a reasonable law enforcement officer in Michigan is unable to ascertain its meaning yet the law can still be enforced against the lay citizenry consistent with the Due Process Clause and Void for Vagueness Doctrine. This irony borders on the absurd when one consider the substantial mandatory training that a person must complete in order to become a law enforcement officer in Michigan.

A person responsible for "the enforcement of the general criminal laws of this state"[51] is a "law enforcement officer" who must successfully complete the Michigan Commission on Law Enforcement Standard ("MCOLES") Basic Police Training Curriculum. MCL 28.609a; Ad R 28.14314. In order to meet the requirements for successful completion of the academic courses established by MCOLES, a law enforcement officer must attain a passing score of not less than 70% on an examination or series of examinations, "covering the criminal law and procedures objectives." See, Polices and Procedures Manual of the Michigan Commission on law Enforcement Standards (MCOLES, 2009), p 75, § 3.1.03(3)(a).[52]

The test announced in *Heien* is satisfied "when the law at issue is 'so doubtful in construction' that a reasonable judge could agree with the officer's view." *Id.* at 541 (Kagan, J., concurring). Thus, the prosecution argues that when a reasonable law enforcement officer who

[51] MCL 28.602(l)(i); Ad R 28.14102(d); Ad R 28.14205(b).
[52] Available at http://www.michigan.gov/documents/mcoles/2009_Polices_Procedures_Manual_283578_7.pdf?20150508074807

has successfully passed his MCOLES training is unable to unravel the mystery surrounding particular statutory language and the statute is so doubtful in construction that a reasonable judge licensed to practice law[53] could agree with the officer's view, the law should still be enforced against lay citizens wholly untrained in the law because, unbelievably, the statute somehow still provides persons of ordinary intelligence fair notice of what is prohibited and, again unbelievably, the statute is not so standardless that it authorizes or encourages seriously discriminatory enforcement.[54] *Fox Television Stations, Inc*,__ US at __; 132 S Ct at 2317. Stated alternatively, the prosecution argues that when a reasonable law enforcement officer who has successfully passed his MCOLES training remains unable to figure out the law and the law remains so doubtful that a reasonable judge licensed to practice law could agree with the officer's view, there is still such precision and guidance in the law "so that those enforcing the law do not act in an arbitrary or discriminatory way" and so that "regulated parties should know what is required of them so they may act accordingly." *Id*.

The prosecution should not be permitted at once to blow both hot and cold before this Court and ask that precious constitutional rights be dwindled even further even where MCOLES-trained law enforcement officers and even judges are unable to ascertain what the law requires. Thus, even if reasonable law enforcement officers would have made the same mistake as the deputies in this case and even if that mistake is objectively reasonable reliable, the Void for Vagueness Doctrine emanating from the Due Process Clause mandates that what is good for the goose is good for the gander such that charges giving rise to this matter must be dismissed.

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[53] Before a person is eligible to qualify for judgeship in Michigan, he or she must first be licensed to practice law in this State. Const 1963, art 6, §19(2); MCL 168.409; MCL 168.411; MCL 168.426(b); MCL 168.431; MCL 168.467. This in turn requires that the person "graduate from a reputable and qualified law school duly incorporated under the laws of this state or another state or territory, or the District of Columbia, of the United States of America." MCL 600.940(1).

[54] Notably, the trial court on its own accord took judicial notice of the fact that most of the residents in the City of Muskegon Heights are African Americans. MHT, pp 42-43.

V. THE EXCLUSIONARY RULE REQUIRES THE SUPPRESSION OF EVIDENCE WHERE DEPUTIES OBSERVE A BALL AND SOCKET TRAILER HITCH POSITIONED SO THAT IT REQUIRES THEM TO REPOSITION THEMSELVES IN ORDER TO VIEW A SINGLE DIGIT ON A VEHICLE REGISTRATION PLATE, THEN MANUFACTURED REASONABLE SUSPICION BY CONDUCTING A COMPUTER QUERY FOR ONLY ONE OF TWO POSSIBLE ALPHANUMERIC SEQUENCES DISPLAYED ON THE REGISTRATION PLATE, AND THEN UNLAWFULLY SEIZE THE DRIVER ON THE BASIS THAT THE TRAILER HITCH CONSTITUTES "FOREIGN MATERIALS" THAT PARTIALLY OBSCURE THE REGISTRATION INFORMATION CONTRARY TO MCL 257.225(2).

The last unpreserved argument presented by the prosecution is that "[t]he Court of Appeals failed to consider, separately, constitutional violations and remedies in the Fourth Amendment context" notwithstanding the fact that the prosecution never actually presented the argument to that court. See, Plaintiff-Appellant's Application for Leave to Appeal, p 33.

The United States Supreme Court "has recognized or developed exclusionary rules where evidence has been gained in violation of the accused's rights under the Constitution, federal statutes, or federal rules of procedure." *United States v Blue*, 384 US 251, 255; 86 S Ct 1416; 16 L Ed 2d 510 (1966). The exclusionary rule "rests on the assumption that limitations upon the fruit to be gathered tend to limit the quest itself," *Terry* , 392 US at 29 (citation and internal quotations omitted), so it is "very much aimed at deterring lawless conduct by police and prosecution," *Lego v Twomey*, 404 US 477, 489; 92 S Ct 619; 30 L Ed 2d 618 (1972), and "deter[ring] unreasonable searches, *no matter how probative their fruits*." *Oregon v Elstad*, 470 US 298, 306; 105 S Ct 1285; 84 L Ed 2d 222 (1985) (emphasis added). "[I]n view of this purpose, an assessment of the flagrancy of the police misconduct constitutes an important step in the calculus." *United States v Leon*, 468 US 897, 911; 104 S Ct 3405; 82 L Ed 2d 677 (1984).

The remedy of suppressing unlawfully seized evidence is not an automatic consequence of a Fourth Amendment violation. *Herring v United States*, 555 US 135, 137; 129 S Ct 695; 172

L Ed 2d 496 (2009). "Instead, the question turns on the culpability of the police and the potential of exclusion to deter wrongful police conduct." *Id.* At one end of the police misconduct continuum "where a Fourth Amendment violation has been substantial and deliberate," *United States v Leon*, 468 US 897, 908-09; 104 S Ct 3405; 82 L Ed 2d 677 (1984), or "police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right," *Michigan v Tucker*, 417 US 433, 447; 94 S Ct 2357; 41 L Ed 2d 182 (1974), the exclusionary rule requires the exclusion of unlawfully obtained evidence in order to disincentive unlawful police conduct. See also, *People v Goldston*, 470 Mich 523, 529; 682 NW2d 479 (2004) ("The primary benefit of the exclusionary rule is that it deters official misconduct by removing incentives to engage in unreasonable searches and seizures.") Conversely, at the other end of the police misconduct continuum where "law enforcement officers have acted in objective good faith or their transgressions have been minor, the magnitude of the benefit conferred on such guilty defendants offends basic concepts of the criminal justice system." *Leon*, 468 US at 907-08.

"The pertinent analysis of deterrence and culpability is objective, not an 'inquiry into the subjective awareness of arresting officers.'" *Herring*, 555 US at 145-46. "We have already held that 'our good-faith inquiry is confined to the objectively ascertainable question whether a reasonably well trained officer would have known that the search was illegal' in light of 'all of the circumstances.'" *Id.* "These circumstances frequently include a particular officer's knowledge and experience, but that does not make the test any more subjective than the one for probable cause, which looks to an officer's knowledge and experience . . . but not his subjective intent . . . ." *Id.*

The present analysis is not materially distinguishable from the mistake of fact and mistake of law analyses in the preceding arguments. The deputies were faced with the binary choice of querying the LEIN database for CHS 5818 (the incorrect registration number) and the LEIN database for CHS 6818 (the correct registration plate number). Once the deputies queried the LEIN database for the incorrect registration number CHS 5818 they knew by the process of eliminating one of two choices that the correct registration plate number was CHS 6818. Instead of simply querying the LEIN database for the correct registration plate number and receiving a response within mere seconds, the deputies decided to feign like they were unaware that CHS 6818 was indeed the correct registration plate number. Deputy Van Andel conceded under defense cross-examination that there was no reason for the deputies not to re-query the LEIN database for the correct registration number: "This is, well, I guess just to answer the question, I don't know." MHT, p 29.

The only rational conclusion to be drawn from such facts is that the deputies wished to manufacture reasonable suspicion through their own willful ostrichism by turning a blind eye to the objective facts that even their incorrect LEIN query established, namely that the correct registration plate number was CHS 6818, and then continue to rely willfully on this false reality in order to justify proceeding with their investigation that both deputies knew at that point was no longer warranted. In short, reasonably well-trained deputies would have known that the seizure was unlawful in light of the actual objective facts which the deputies knew they were actually facing

Similarly, irrespective the deputies manufacturing reasonable suspicion based upon feigned ignorance of the objective facts, reasonably well-trained deputies would have known that the seizure was unlawful as a matter of law in light of all the attendant circumstances. The plain

language of the second sentence in MCL 257.225(2) provides that a registration plate must be "in a place and position which is clearly visible." *Id.* The modifying or restrictive words "which is clearly visible" relate to the last antecedent, *i.e.*, "place and position," so a reasonable law enforcement officer would not have believed that it was objectively reasonable to conclude that a ball trailer hitch partially obstructing a single digit on a registration plate somehow violated this aspect of the statute because it is undisputed that the place and position where the registration place was attached to Mr. Dunbar's vehicle was clearly visible. Likewise, a reasonable law enforcement officer would not have believed that it was objectively reasonable to conclude that a ball trailer hitch partially obstructing a single digit on a registration plate violated the language contained in subsection two providing that "[t]he plate shall be maintained free from foreign materials that obscure or partially obscure the registration information, and in a clearly legible condition." MCL 257.225(2) (all emphasis added). Again, common sense provides that trailer ball hitches are not "materials" that are "foreign" to a back bumper and from which a registration plate must remain free. In short, reasonably well-trained deputies would have known that the seizure was unlawful as a matter of law in light of all the attendant circumstances.

In light of the foregoing, the deputies' seizure of Mr. Dunbar in this instance falls on the end of the police misconduct continuum where a Fourth Amendment violation was substantial and deliberate, willful, or at the very least negligent, and this conduct deprived Mr. Dunbar of his rights under the Fourth Amendment. No precedent allows officers to feign on one hand as though they did not know the correct facts and then on the other hand argue that their actions are "objectively reasonably" because "[r]esponsible law-enforcement officers will take care to learn 'what is required of them' under Fourth Amendment precedent and will conform their conduct to these rules." *Davis v United States*, __ US __, __; 131 S Ct 2419, 2429; 180 L Ed 2d 285

(2011). The conduct at issue here is precisely the type of deliberate, willful, or negligent conduct that the exclusionary rule was designed to prevent. Accordingly, the Court of Appeals' opinion should be affirmed.

RELIEF

WHEREFORE, Appellee respectfully requests this Honorable Court to AFFIRM the Court of Appeals opinion, to award all fees and costs incurred as a result of defending the present appeal, and to grant any other relief to which it may appear that Appellee is entitled.

Respectfully submitted,

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Dated: May 14, 2015

STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGN,

Plaintiff-Appellant,

v.

S Ct Case No. 150371
COA Case No. 314877
Cir Ct Case No. 12-062736-FH

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PROOF OF SERVICE

The undersigned certifies that s/he served a copy of Defendant-Appellee's Supplemental Brief and this Proof of Service upon all parties of record, or their counsel if represented, by uploading said papers to the Trufiling server for electronic transmission to the Michigan Supreme Court and all parties of record, or their counsel if represented on the date set forth below.

Dated: May 14, 2015

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Affiant